

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2130 of 1982

Date of decision: 7-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAYED MAHMADBHAI RAHIMBHAI

Versus

BAI SUBHANKHATU W/O DECEASED RASULBHAI VALIBHAI

Appearance:

MR M. M. Jadeja for Petitioner
MR NALIN K THAKKER for Respondent No. 1/1 to 1/7
Mr. Mukesh Patel for Respondent No. 3
None present for other respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/01/97

ORAL JUDGEMENT

The petitioner has filed this special civil

application challenging the order annexure-A dated 6-11-1981 of the Gujarat Revenue Tribunal, Ahmedabad. The facts of the case, briefly stated, are that one Rasulmiya Valimiya was the owner and in possession of the land bearing survey No.230/3, 230/4 and 194 of village Ambeta, Taluka Hansot, District Broach. He died on 16-5-1973. He had executed two registered gift deeds in favour of the petitioner on 8-2-1973 and 14-5-1973 and handed over possession of the lands to him. Since then the petitioner is cultivating the said land. So the petitioner claimed title to the said land on the basis of the registered gift deeds. Respondent No.1 - Bai Subhankhatu, since deceased, now represented by her heirs and legal representatives No.1/1 to 1/7, was the widow of late Rasulmiya Valimiya. Respondent No.2 - Gulam Mayuddin Sidumiya, since deceased, now represented by his heirs and legal representatives 2/1 to 2/6, claimed tenancy right over the disputed land. There were various proceedings in between the parties under the provisions of the Bombay Tenancy and Agricultural Land Act, 1948 before the Mamlatdar & Agricultural Land Tribunal. Ultimately revision Application No. TEN. BA. 1171/77 against the order dated 2-11-1977 of the Assistant Collector, Broach in Appeal No.108/77 came to be decided by the Gujarat Revenue Tribunal under its order dated 6th April, 1978. Respondent No.2, since deceased, filed the said revision application.

2. The Mamlatdar and A.L.T., Ankleshwar, in his inquiry in Case No.41 of 1973 under section 70(b) of the Tenancy Act, under his order dated 13th December, 1976 held that respondent No.2, since deceased, was the tenant of the land in question. That decision came to be confirmed by the Assistant Collector on the appeal filed by the petitioner. However, the revision application No.1171/77 filed by the petitioner was allowed by the decision rendered on 6th April, 1978, and set aside the finding of the court below given in favour of respondent No.2. The Gujarat Revenue Tribunal, in the aforesaid decision, gave finding that the petitioner is cultivating the land in dispute lawfully, paying the land revenue and taxes; he has mortgaged the land with the Society, etc., The case of respondent No.2, of tenancy, was negative. The Tribunal further gave finding that respondents No.1 and 2, since both deceased, have colluded against the petitioner by creating fictitious tenancy. Respondent No.2 preferred special civil application No.1519/78 against the said order of the Gujarat Revenue Tribunal before this Court. That special civil application came to be decided by this court on 3-12-1979 and it is the case of the petitioner that this court had concluded that

respondent No.2, since deceased, is not tenant of the land. That finding of the Tribunal was sought to be confirmed by this Court. Along with special civil application No.1519/76 this court had consolidated special civil application No.1591/76 also. The facts of special civil application No.1591/76 as given before this court have to be briefly given.

3. On the basis of the registered sale deeds, vide entry No.1959, the land in dispute was mutated in the name of the petitioner. The said entry was taken in the register and it was certified. Against the order of mutation of entry No.1959 respondent No.1, since deceased, filed appeal before the Prant Officer. The Prant Officer has decided the matter with direction to the parties to establish their rights in civil court and till then the name of respondent No.1, since deceased, was allowed to be continued in the revenue records. Against that order of the Prant Officer, the petitioner filed appeal before the appellate authority, which came to be dismissed. Then the petitioner has taken up the matter in revision before the State Government, but that was also rejected. The petitioner then filed special civil application No.1591/76 before this Court which came to be decided by this court under order dated 3-12-1979 along with special civil application No. 1519/78. Special civil application No.1591/76 was rejected by this court holding that the writ petition could not be entertained as the matter would involve examination of disputed facts regarding title. However, certain observations were made by the court which I will deal with at appropriate time in this judgment.

4. Gulam Moyuddin Sidumiya, who was petitioner in special civil application No.1519/78, filed application under section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 before the Mamlatdar & A.L.T., which was registered as Tenancy Case No.458/79. The petitioner put appearance in those proceedings and he objected to the continuation of those proceedings by filing application. Continuation of the proceedings initiated by respondent No.2 (since deceased) was objected on the ground that other proceedings taken by the petitioner were still pending and these have not been finally disposed of. That application of the petitioner was rejected by the Mamlatdar & A.L.T. under his order dated 12th September, 1980. The Mamlatdar & A.L.T. decided to proceed with the matter. The matter has been taken before the Deputy Collector, but that has also been dismissed. Then the matter has been taken up in revision application, which also came to be dismissed under the

impugned order.

5. Learned counsel for the petitioner contended that the application filed by respondent No.2(since deceased) under section 32(1)(b) of the Act could not have been proceeded with by the Mamlatdar and A.L.T. as this court had given clear finding in special civil application No.1519/78 interse the petitioner and respondent No.2 (since deceased) that respondent No.2 is not a tenant of the disputed land. Option was given to respondent No.2 to revive the tenancy proceedings against Bai Subhankhatu,i.e. respondent No.1 herein (since deceased), in case she was held to be owner of the disputed land in the civil proceedings initiated by petitioner. In the proceedings before the Revenue Tribunal, respondent No.1 had admitted respondent No.2 to be tenant of the land in dispute. It has next been contended that all the three authorities have completely misconstrued the decision given by this court in special civil application No.1519/78. On the other hand the counsel for respondent No.1/1 to 1/7 supported the order passed by the three authorities below.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is not in dispute between the parties that the earlier proceedings which were initiated by respondent No.2 (since deceased) before the Mamlatdar under section 70(b) of the Act, which ultimately culminated in the dismissal of special civil application No.1519/78 by this court on 3-12-1979. This court, while deciding special civil application No. 1519/79 filed by respondent No.2 (since deceased) had given the finding that as far as Mohmed Rahim Saiyed, i.e. the petitioner herein, is concerned, the finding of the courts below that respondent No.2 is not a tenant, operate as finding of fact, though between Gulam Mayuddin Sidumiya (respondentNo.2 herein) and Bai Subhankhatu (respondent No.1 herein), the matter may be different because of the categorical admission of the said woman regarding tenancy right of Gulam Mayuddin Sidumiya, the petitioner in those proceedings and respondent No.2 herein. This court held that whether a person is a tenant or not is essentially a finding of fact and this court, even if it is inclined to take a view different from the one taken by the Tribunal, has no jurisdiction to go behind the finding of fact unless the some error apparent on the face of the record is pointed out. The counsel who was appearing for respondent No.2 in those proceedings, where he was petitioner, having taken the court critically through the judgment of the Tribunal, failed to point out any error of law, much less

patent error, in the judgment of the Tribunal. It has been held by this court that so far as the contestant, the petitioner herein, is concerned, the question stood concluded between respondent No.2 herein and the petitioner, that is, respondent No.2 is not tenant of petitioner. This court, while disposing of special civil application No.1519/78 has observed that if in the final analysis right of Mohmed Rahim Saiyed is not acknowledged and upheld and Subhan Khatu is held to be landlady, it will be open to the petitioner therein (respondent No.2 herein) to revive his claim of tenancy against her in view of her categorical and forthright admission of his alleged status. It has further been observed that equally it will be open to the petitioner therein (respondent No.2 herein) to resort to some proceedings under section 32 (1B) of the Bombay tenancy Act on his alleged plea that he was in possession upto 1958 or at any rate on 15-6-1955 and had come to be evicted otherwise than in due course of law by late Rasoolmiya Vallibhai before 3-3-1973; and that if it is legally open to him to fall back on his alleged right under section 32(1B) of the Bombay Tenancy Act, he may advert to it and the judgment would not come in his way.

7. After the decision was rendered in the aforesaid special civil application, respondent No.2 has filed application under section 32(1B) of the Bombay Tenancy Act, and the petitioner has objected to the continuation of those proceedings on the ground that inter se them the matter has been concluded that respondent No.2 is not tenant of the petitioner. I have carefully read the judgment of this court given in special civil application No.1519 of 1978 and I am of the opinion that the authorities have committed no illegality declining to stay the proceedings initiated by respondent No.2 by filing application under section 32(1B) of the Tenancy Act. Earlier, respondent No.2 had sought declaration under section 70(b) of the Bombay Tenancy Act that he is the tenant of land in dispute, wherein, it is claimed, the courts found him to be not the tenant of petitioner. But in those proceedings respondent No.1 herein, widow of late Rasoolbhai Vallibhai, has made admission in unequivocal terms that he is the tenant of the land in dispute. The benefit which has been conferred by the Bombay Tenancy Act, 1948 is independent of the right which has been claimed by respondent No.2 in the earlier proceedings initiated under section 70(b) of the Act. In the present proceedings, initiated by respondent No.2 under section 32(1B) of the Act, the authority has to consider whether he was in possession of the land in dispute on a particular date, and the fact that he has

been dispossessed from the land otherwise than in accordance with the provisions of section 29 or other provisions of the Act, and in case he is able to establish both the things, then he will be declared to be deemed purchaser of the land in dispute. The learned counsel for the petitioner has laid emphasis on the ground that even the proceedings under section 32(1B) could have been initiated by respondent No.2 only on the final termination of the civil proceedings initiated by him against respondent No.1. But I do not find any substance in this contention of the counsel for the petitioner. In the civil proceedings, which has been initiated by the petitioner, respondent No.2 is not a party. In the civil proceedings the dispute is whether the gift deeds which have been made in favour of the petitioner by late Rasoolbhai Valibhai is valid and he became owner of the suit land on the basis of those gift deeds, and has also come in possession thereof in pursuance of those gift deeds. It is true that in civil suit, respondent No.1, who is defendant therein, has come up with the case that possession could not have been delivered to the petitioner as the land was in possession of the tenant. Whatever might be decided in the civil proceedings, the same has no relevance on the alleged right of respondent No.2 which, he is claiming under section 32(1B) of the Act. In these proceedings respondent No.3 is claiming himself to be tenant of late Rasoolbhai Vallibhai on a particular date as well as questioning his dispossession by Rasoolbhai Vallibhai from the land in dispute. Under section 32(1B) of the Bombay Tenancy Act, 1948 valuable right has been conferred on the tenant on a particular date, who has been dispossessed during the period as specified in the said provision, without following the due process of law, to purchase the land. This court, while deciding special civil application No.1519/78, no bar or prohibition on exercise of his right by respondent No.2 under section 32(1B) has been put. The judgment has to be read in the context of the facts of the case. In the civil proceedings respondent No.2 was not a party and the decision in the civil proceedings may have no bearing on the alleged right of respondent No.2, being deemed purchaser of the land under section 32(1B) of the Act. This court has clearly demarcated the rights which were exercisable by respondent No.2 against respondent No.1, only on the eventuality of the decision of the civil suit in her favour. So far as the petitioner is concerned, it has been decided that respondent No.2 is not his tenant. But after giving these findings, the court has not put any restriction, nor the court could have put any restriction on the right of respondent No.2 of deemed

purchaser of the land under section 32(1B) of the Act.

8. The matter has come before this court on the application filed by the petitioner for stay of the proceedings initiated by respondent No.2 under section 32(1B) of the Act. It is only an interlocutory order made by the authorities and I do not find any illegality in the order of those authorities not to stay the proceedings. Normally this court does not entertain writ petition against interlocutory orders. Otherwise also nothing on merits has been decided, and the respective rights and interests of the parties have not been decided by the Revenue authorities. In case the order made by the courts below are allowed to stand, it will not occasion any failure of justice to the petitioner. Still the petitioner has right to make whatever defence as are available to him, in the proceedings initiated by respondent No.2 under section 32(1B) of the Act to nonsuit him. It is only a case where respondent No.2 has claimed his alleged right on which the authorities will make orders in accordance with law.

9. Nobody can be debarred from initiating proceedings for claiming his alleged right. The matter is different whether ultimately on merits the parties succeed or not. But normally this court should not come in the way of adjudication proceedings initiated by the parties for their alleged rights. Taking into consideration the totality of the facts of the case, otherwise also, no prejudice whatsoever is likely to be caused to the petitioner in case the proceedings initiated by respondent No.2 by filing application under section 32(1B) of the Act are not stayed. As stated earlier, the petitioner has all the rights to take any defence available against maintainability of the application under section 32(1B) of the Act, filed by respondent No.2, as well as all other grounds to nonsuit the party. Refusal to stay those proceedings will not result in failure of justice to the petitioner.

10. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs. Interim relief granted earlier stands vacated.

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